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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CONTEMPT PETITION NO.253 OF 2005**
**IN**
**APPEAL FROM ORDER NO.592 OF 2005**

The Panch Pushpa Co-operative
Housing & Anr. ... Petitioners

V/s.

The Commissioner
Brihan Mumbai Mahanagar Palika & Ors. ... Respondents

Mr.A.L. Gore for Petitioners
Mr.R.M. Sawant for Respondent Nos.2, 4 and 5

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 16, 2005**

**P.C.:**

. This Petition complains of a breach of the order dated 3.8.2005. The suit had been filed before City Civil Court by the Petitioners claiming certain reliefs against the respondent-MHADA. The City Civil Court had passed certain orders by allowing prayer clause (a) of the Notice of Motion. The City Civil Court had directed the MHADA not to enter the society's premises and not to remove the fencing boundary of land between the society and the Samaj Mandir Plot more particularly mentioned in the plaint. This order was challenged in an Appeal from Order No.592 of 2005. The learned Single Judge of this

Court after consideration of the submissions of the parties has passed the following order:

> 2. .... In the premises the impugned order stands modified as under and the appeal is disposed off in terms of the same.
>
> (a) The appellants to construct a brick wall in place of the barbed wire fencing upto the height of 5 to 6 ft. and with 9 inches width.
>
> (b) There shall not be any additional gate except the 20 ft. wide gate as proposed.
>
> (c) the existing 20 ft. wide roads inside the premises shall not be used for any parking of vehicles, two wheelers as well as four wheelers.
>
> (d) In case the appellants are required to take steps for conveyance of the property in favour of the existing as well as proposed Societies as per the rules, the same shall be done as expeditiously as possible and in any event within a period of six months from today.
>
> (e) the existing trees shall not be disturbed.

2. The complaint of the Petitioners is that this order has been breached. According to them, while constructing a brick wall in place of the barbed wire fencing upto an height of 5’ to 6’ and 9" thickness, the MHADA has broken the wall which the Petitioners claim surrounds a part of their property. This wall, according to MHADA, is not the boundary wall of the property of the Petitioners. The wall encloses a 20’ wide passage. The Respondents have only provided access to the newly constructed building of 28 flats. It is

submitted that a small portion of the wall surrounding the 20’ wide passage was required to be broken in order to bring that in line with the rest of the wall which the MHADA had constructed pursuant to the order of the learned Single Judge. This was in order to allow ingress and egress to users of the common passage.

3. In my view, no case for contempt has been made out. Petition rejected.